

**DISTRICT OF COLUMBIA**  
**DOH Office of Adjudication and Hearings**

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

NEW DEANVILLE, L.L.C.  
a/k/a NEW 3145 DEAUVILLE L.L.C.  
Respondent

Case No.: I-00-70350  
I-00-20408

**FINAL ORDER**

**I. Introduction**

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and Title 21 Chapter 7 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (I-00-70350) served September 24, 2001, the Government charged Respondent “New Deanville, L.L.C.”<sup>1</sup> with a violation of 21 DCMR 700.3 for allegedly failing

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<sup>1</sup> Although the Notices of Infraction list Respondent as “New Deanville, L.L.C.”, according to documents submitted by the Government, Respondent’s actual name is “New 3145 Deauville L.L.C.”. Indeed, in its January 4, 2002 submission to this administrative court, Respondent’s apparent agent, Sergio Guerrero, identified Respondent as “New Deanville L.L.C.” *See, e.g., DOH v. Bloch & Guggenheimer, Inc.*, OAH No. I-00-10439 at 1 n.1 (Final Order, April 18, 2001) (finding person who, without objection, acted as apparent agent for respondent could bind respondent for purposes of disposition); *see also DOH v. JV Trucking, Inc.*, OAH No. I-00-10445 at 2 n.2 (Final Order, March 2, 2001); *Insurance Management, Inc. v. Eno & Howard Plumbing Corp.*, 348 A.2d 310, 312 (D.C. 1975). Because Respondent has entered a plea of Admit with Explanation and has not raised any defective service objections in these proceedings, I deem any such objections as to service to have been waived and, for purposes of this case, construe New Deanville, L.L.C. to be the same party-in-fact as New 3145 Deauville L.L.C. *Cf. Kroot v. District of Columbia*, 800 F. Supp. 976, 980 (D.D.C. 1992) (noting general rule that affirmative defenses are waived by a failure to raise them in an answer to a complaint).

to properly containerize solid wastes.<sup>2</sup> The Notice of Infraction alleged that the violation occurred on September 21, 2001 at 3145 Mt. Pleasant Street, NW, and sought a fine of \$1,000.

Respondent failed to answer the Notice of Infraction within the required twenty (20) days from service (fifteen (15) days plus five (5) days for service by mail pursuant to D.C. Official Code §§ 2-1802.02(c), 2-1802.05). Accordingly, on October 19, 2001, this administrative court issued an order finding Respondent in default, assessing a statutory penalty of \$1,000 pursuant to D.C. Official Code § 2-1802.04(a)(2)(A), and requiring the Government to issue a second Notice of Infraction pursuant to D.C. Official Code § 2-1802.02(f).

The Government served the second Notice of Infraction (I-00-20408) upon Respondent on October 31, 2001. Respondent again failed to respond to the Notice of Infraction within the allotted time. Accordingly, on December 11, 2001, this administrative court issued a Final Notice of Default which, among other things, assessed an additional statutory penalty of \$1,000 pursuant to D.C. Official Code § 2-1801.04(a)(2)(B) and scheduled an *ex parte* proof hearing for January 15, 2002 at which Respondent could elect to appear and contest liability, fines or penalties in accordance with law.

On January 2, 2002, Respondent filed an untimely plea of Admit with Explanation pursuant to D.C. Official Code § 2-1802.02(a)(2), along with a request for a reduction or suspension of any applicable fines and statutory penalties. Respondent explained that its trash

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<sup>2</sup> 21 DCMR 700.3 provides: “All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.”

collection company “BFI” had been missing trash pick up days for the last six (6) months, and that Respondent had repeatedly complained to BFI about this to no avail. According to Respondent, BFI has blamed its performance on its drivers and their apparent unfamiliarity with new collection routes.

By Order dated January 15, 2002, I permitted the Government to respond to Respondent’s plea and request. In its response, the Government stated its position that Respondent should be “held accountable” for the admitted violation of 21 DCMR 700.3.

## **II. Findings of Fact**

1. At all relevant times, Respondent New Deanville L.L.C. a/k/a/ New 3145 Deauville L.L.C., owned the apartment building located at 3145 Mount Pleasant Street, NW.
2. By its plea of Admit with Explanation, Respondent has admitted violating 21 DCMR 700.3 on September 21, 2001 at 3145 Mount Pleasant Street, NW.
3. On September 21, 2001, Respondent failed to properly store and containerize for collection solid wastes at 3145 Mount Pleasant Street, NW.
4. Respondent’s trash collector, identified as “BFI”, had missed collection days over the past six months, and Respondent sometimes had to call BFI repeatedly for pick-ups. Respondent is current on its payments to BFI.
5. Respondent has provided no explanation as to its failure to timely answer the first and second Notices of Infraction.

6. There is no evidence in the record of a history of non-compliance on the part of Respondent.

### **III. Conclusions of Law**

1. Respondent violated 21 DCMR 700.3 on September 21, 2001. A fine of \$1,000 is authorized for a first offense of this violation. 16 DCMR §§ 3201.1(a)(1), 3216.1(b). Respondent has requested a reduction or suspension of the authorized fine. Respondent's attempt to shift responsibility for the violation to its trash collection company is unavailing. *See Bruno v. District of Columbia Board of Appeals and Review*, 665 A.2d 202, 203 (D.C. 1995) (property owner held liable for violation of § 700.3 despite, *inter alia*, his assertion that trespassers dumped trash on his property). In light of the lack of evidence in the record of a history of non-compliance on the part of Respondent, however, I will reduce the fine to \$825. D.C. Official Code §§ 2-1802.02(a)(2); 18 U.S.C. § 3553.
2. Respondent has also requested a reduction or suspension in the applicable statutory penalties. If a Respondent fails without good cause to answer a Notice of Infraction within the allotted time period (fifteen (15) days from service plus five (5) days for mailing pursuant to D.C. Official Code §§ 2-1802.02(c), 2-1802.05), a statutory penalty equal to the amount of the fine shall be assessed, and a second Notice of Infraction is issued. D.C. Official Code §§ 2-1801.04(a)(2)(A), 2-1802.02(f). If a respondent similarly fails to answer the

second Notice of Infraction, the statutory penalty doubles. D.C. Official Code § 2-1801.04(a)(2)(B).

3. Respondent has offered no explanation for its failure to timely respond to the first and second Notices of Infraction, and, as such, has not established good cause for that failure. Accordingly, statutory penalties of \$2000, in addition to the fine, shall be imposed without reduction. D.C. Official Code § 2-1802.02(f).

#### **IV. Order**

Based upon the foregoing findings of fact and conclusions of law, and the entire record of this case, it is, hereby, this \_\_\_\_ day of \_\_\_\_\_, 2002:

**ORDERED**, that Respondent shall pay a fine and statutory penalties in the total amount of **TWO THOUSAND EIGHT HUNDRED TWENTY-FIVE DOLLARS (\$2,825)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

**ORDERED**, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

**ORDERED**, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

**FILED            02/04/02**

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Mark D. Poindexter  
Administrative Judge